

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTER DISTRICT OF MISSOURI
SOUTHERN DIVISION**

Billy Beasley)
v. Plaintiff,)
Homesite Indemnity Company (Inc))
Defendant.)
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)
)
 No. 6:10-cv-3168
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)
 Judge: Hon. R. Dorr
)

PLAINTIFF'S MOTION FOR REMAND TO STATE COURT

Plaintiff, Billy Beasley, through undersigned counsel, files this Motion for Remand to State Court. For the reasons set forth in this motion and as more fully explained in the accompanying memorandum in support, Plaintiff requests this Court remand this cause to the Dallas County Circuit Court, at Buffalo, Missouri, for a trial on the merits:

1. A Petition For Damages was filed in the Dallas County Circuit Court, at Buffalo, Missouri on or about March 29, 2010.
2. In the Petition For Damages, Plaintiff alleged the following:
 - a. COUNT ONE- BREACH OF CONTRACT: Defendant materially breached the terms of a contract of insurance provided to plaintiff for the loss of his residence resulting from fire;
 - b. COUNT TWO- VEXATIOUS REFUSAL TO PAY AN INSURANCE CLAIM UNDER SEC. 375.420 MO.R.S.(2002): Defendant, a foreign corporation authorized to conduct business in Missouri, relied upon an unfounded and arbitrary

evaluation of Plaintiff's fire loss which caused an unreasonable delay in settlement without good cause or excuse; or

c. COUNT THREE- VEXATIOUS REFUSAL TO PAY AN INSURANCE CLAIM UNDER SEC. 375.296 MO.R.S.(2002): Defendant, a foreign corporation not authorized to conduct business in Missouri, relied upon an unfounded and arbitrary evaluation of Plaintiff's fire loss which caused and unreasonable delay in settlement without good cause or excuse.

3. The claims against the Defendant are based solely on state law.

4. The parties to this lawsuit reside in separate states:

a. Plaintiff is a citizen of the State of Missouri; and
b. Defendant is a Kansas corporation with its principal place of business in Boston, Massachusetts.

5. On May 4, 2010, Defendant Homesite filed a Notice of Removal with this Court, alleging that at the time of removal, complete diversity existed and the amount in controversy exceeded \$75,000, which is being contested by Plaintiff through this motion.

6. For the reasons discussed in the accompanying suggestions in support of this motion, the amount in controversy in this action does not exceed \$75,000 exclusive of interest and costs as required under 28 U.S.C. § 1332:

a. defendant Homesite made partial settlement payments to plaintiff prior to removal thereby satisfying part of the damages for which Plaintiff was seeking relief;
b. under Missouri substantive law, a party cannot be compensated for the same injury twice; and

c. after these partial settlement payments, no fact finder could legally conclude from the pleadings and the proof adduced at trial that the damages recoverable by Plaintiff would be greater than \$75,000.

7. At no time during the pendency of this lawsuit was a claim of right made arising under the Constitution, treaties, or laws of the United States; nor is there any other basis for this Court's original jurisdiction.

8. Because this Court lacks subject-matter jurisdiction, the lawsuit must be remanded under 28 U.S.C. § 1447(c).

9. Plaintiff requests the Court require the removing Defendant Homesite to pay Plaintiff's costs and expenses, including attorney's fees, incurred as a result of the removal, under 28 U.S.C. § 1447(c).

WHEREFORE, plaintiff respectfully request this Court: (1) grant this motion and remand this case to the Dallas County Circuit Court, at Buffalo, Missouri; and (2) order the removing Defendant Homesite, and its attorneys to pay all Plaintiff's costs and expenses, including attorney's fees, incurred because of the wrongful removal of this action.

Respectfully submitted,

/s/ James R. Moore

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 03, 2010, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/ James R. Moore

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